IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants(s):	Barry et al.	**Conf. No.:**	6426
Serial No.:	10/087,679	**Art Unit:**	2178
Filed:	March 1, 2002	**Examiner:**	Stork, Kyle R.
Title:	SYSTEM AND METHOD FOR DEVELOPING A WEBSITE	**Docket. No.:**	END920010124US1 (IBME-0037)

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants respectfully request a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicants submit that the above-identified application is not in condition for appeal because the Office has failed to establish a prima facie case of obviousness based on an error in facts. Claims 1-36 are pending in this application.

Turning to the rejection, in the Final Office Action, claims 1, 7-8, 16, 22, and 28 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Barritz (U.S. Patent Pub. No. 2001/0037258 A1), hereinafter "Barritz," in view of Mueller *et al.* (U.S. Patent No. 6,009,398), hereinafter "Mueller," further in view of Graber *et al.* (U.S. Patent No. 5,712,979), hereinafter "Graber," further in view of Boehne *et al.* (U.S. Patent No. 6,434,500), hereinafter, "Boehne," and further in view of Adobe GoLive 5.0 User Guide, (published 2000), hereinafter, "Adobe." Claims 2, 12, 18 and 23 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Barritz in view if Mueller, Graber, Boehne and Adobe, and further in view of

Yen *et al.* (U.S. Patent No. 6,724,918 B1), hereinafter "Yen," and further in view of Carrier, III *et al.* (U.S. Patent No. 5,960,196), hereinafter "Carrier, III." Claims 3, 19 and 24 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Barritz in view of Mueller, Graber, Boehne and Adobe, and further in view of Stern (U.S. Patent No. 6,724,918), hereinafter "Stern." Claims 4, 20 and 25 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Barritz in view of Mueller, Graber, Boehne and Adobe, and further in view of Lemay ("Laura Lemay's Teach Yourself Web Publishing with HTML 4 in 14 Days", 1997, Sams.net), hereinafter "Lemay," and further in view of Towers ("Visual Quickstart Guide: Dreamweaver 2 for Windows and Macintosh", 1999, Peachpit Press), hereinafter "Towers." Claims 5, 21 and 26 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Barritz in view of Mueller, Graber, Boehne and Adobe, and further in view of Conant *et al.* (U.S. Patent Pub. No. 2002/0129056 A1), hereinafter "Conant," and further in view of Busch *et al.* (U.S. Patent No. 6,656,050 B2), hereinafter "Busch," and further in view of Daberko (U.S. Patent No. 5,787,445), hereinafter "Daberko." Claims 6, 17 and 27 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Barritz in view of Mueller, Graber, Boehne and Adobe, and further in view of Helgeson *et al.* (U.S. Patent No. 6,643,652 B2), hereinafter Helgeson. Claim 9 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Barritz in view of Mueller, Graber, Boehne, Adobe and Yen. Claims 10-11 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Barritz in view of Mueller, Graber, Boehne, Adobe, Yen and Helgeson. Claim 13 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Barritz in view of Mueller, Graber, Boehne, Adobe, Yen, Carrier, III and Stern. Claim 14 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Barritz in view of Mueller, Graber, Boehne, Adobe, Yen, Carrier, III, Stern, Lemar, and Towers. Claim 15 is

rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Barritz in view of Mueller, Graber, Boehne, Adobe, Yen, Carrier, III, Stern, Lemay, Towers, Conant, Busch, and Daberko.

Applicants submit that these rejections are clearly not proper and without basis because at least one claim limitation is not met by the combined features of the references cited by the Office. As argued in the April 24, 2006, After Final Amendment, the cited references fail to teach or suggest each and every element of independent claim 1. In particular, the cited references fail to teach or suggest, *inter alia*, that the calendar system, breadcrumb system, and feedback systems are used to develop features of a website. See April 24, 2006 Amendment, page 5, paragraph 1. Specifically, the calendar system of Mueller, which the Office equates with the calendar system of the claimed invention, is an element of a website and not used to define a calendar in developing a website. See April 24, 2006 After Final Amendment, page 6, paragraph 1. Similarly, the feedback system of Boehne, which the Office equates with the feedback system of the claimed invention, provides feedback to an operator, and does not provide a developer of a website a way to define a feedback mechanism for the website. See April 24, 2006 After Final Amendment, page 6, paragraph 2. Likewise, the history codes in Graber, which the Office equates with the breadcrumb system of the claimed invention, does not teach that it is used to develop a breadcrumb mechanism for a website that is being developed, but only that a reader that is using the web site is able to see all visited web pages and return to a particular page. Accordingly, the teachings of the cited references are directed to elements of a website and not to systems for developing these elements.

As further argued in the March 24, 2006 Amendment, even assuming, *arguendo*, that the cited references teach or suggest the features of the claimed invention, there is no motivation or

suggestion in the references themselves or elsewhere in the art for combining the references. See March 24, 2006 Amendment, page 7, paragraph 2 through page 9. In particular, each of the references performs its particular function in a different environment. For example, Barritz performs its functions in a custom environment while a specific Adobe environment is key to Adobe. To this extent, it is unclear whether Barritz would function correctly if placed in the Adobe environment, whether Adobe would function correctly if placed in the custom environment of Barritz, or whether any or all of Mueller, Graber and Boehne would function in an environment created by a theoretical combination of the two. Furthermore, it is unclear whether the alleged ability of Adobe to enable a non-programmer to develop a web site could be extended to the Barritz, Mueller, Graber and Boehne references to allow a developer to develop all of the mechanisms of the claimed invention without a need for knowledge of web-based programming. As such, Applicants contend that the Office's combination of references is based upon hindsight resulting from the teachings of the claimed invention and not from any teaching or suggestion in the references themselves of in the art.

Accordingly, the Office has failed to state a prima facie case of obviousness, and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution.

With respect to the rejections of independent claims 16, 22, and 29, Applicants note that each claim includes a feature similar in scope to those of claim 1. Further, the Office relies on the same arguments and interpretations of the cited references as discussed above with respect to claim 1. Further, the Office relies on the same arguments and interpretations of the cited references as discussed above with respect to claim 13. To this extent, Applicant herein
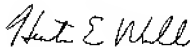
incorporates the arguments presented above with respect to claim 1, and respectfully request withdrawal of the rejections of these claims for the above-stated reasons.

The dependent claims are believed to be allowable based on the above arguments regarding the claims from which they depend, as well as for their own additional features.

With further regard to the rejection as a whole, Applicant notes that the Office's rejection of independent claim 1 seeks to combine five different references to support its obviousness rejection, and six or more references for other claims. To this extent, Applicant submits that it is unfathomable how the Office can maintain its contention that there is motivation or suggestion in the references themselves or elsewhere to combine such diverse references. This is further accentuated by the fact that each of the references performs a vastly different task. Accordingly, Applicants submit that the combinations that underlie the Office's rejections are flawed.

Applicants respectfully submit that the application is not in condition for appeal. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

Hunter E. Webb
Reg. No.: 54,593

Date: September 13, 2006

Hoffman, Warnick & D'Alessandro LLC
75 State Street, 14th Floor
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)   RAD/hew